FOR MYSORE STATE

3-11-58.

Home (1954) Department.

RC SERIES.

G.O. No. 3653

Dated 10 12 54.

Passed

14.12.54

[Despatch Abstract.]

Crl. jno. - Appeal against acquittal -
C.C. No. 192/54, S.M., Udipi - Applin. - declined

Ref.C5.6708/54.

Office of the Addl.Dt.Magistrate (I)
South Kanara dated 15.11.54.

From

Sri M.G.Raja Ram, I.A.S.,
Addl.Dt.Magistrate (I) S.Kanara.

To

The Secretary to
Government,
Home Department,
Fort St. George,Madras 9

ASSISTANT SECRETARY TO GOVERNMENT
22 NOV 1954

Sir,

CRIMINAL JUSTICE--Appeal against acquittal C.C. 192/54 on the file of the Stationary Sub Magistrate (Judicial) Udipi--under section 447 and 352 I.P.C--Proposals--Report submitted.

Ref: Report R.C.No.C1/17893/54 dated 6.11.54 from the Dt.Superintendent of Police S.Kanara.

153754

I enclose a copy of report of the District Superintendent of Police South Kanara R.C.No.C1/17895/54 dated 6.11.54 with copy of the grounds of appeal and a copy of the judgment in duplicate in C.C.192/54 on the file of the Stationary Sub Magistrate Udipi.

2. I agree with the views of the District Superintendent of Police South Kanara and the Public Prosecutor South Kanara. I therefore request that necessary action may be taken to prefer an appeal against the acquittal of the accused passed by the Sub Magistrate (Judicial) Udipi in C.C.192/54.

Yours faithfully,

15.11.54.
For Addl.Dt.Magistrate(I)

IC/17.11.54.

Copy of letter R.C.No.C1.17893/54 dated 6.11.54 from the Dt.Supdt. of Police S.Kanara to the Addl.Dt. Magistrate (1nd) South Kanara Mangalore.

Sub: Criminal Justice--Appeal against acquittal C.C.No. 192/54 on the file of the Judicial Sub Magistrate,Udipi--Karkal station Cr.No. 52/54 under section 447 and 352 I,P.C--Accused Paddu Naika and 3 others--report--Forwarded.

The accused Paddu Naika, Charba Naikam Eraya Shetty and Sundera Naik concerned in Karkal station Cr.No. 52/54 under section 447 and 352 I P.C were acquitted by the learned Judicial Sub Magistrate,Udipi under section 245(1) Cr.P.C in C.C.No.192/54 on the file of his court.

2. The Public Prosecutor,South Kanara who was consulted in the matter opined that the action of the Judicial Sub Magistrate, was improper and that it is a fit case to be appealed against.

3. A certified copy of the judgment in the case and the grounds of appeal prepared by the Public Prosecutor South Kanara in duplicate are enclosed herewith. The case diary file in Karkal Station Cr.No.52/54 (102 pages) is also enclosed. The receipt of the case diary file may kindly be acknowledged.

4. I request you kindly to take necessary action to prefer an appeal against the acquittal orders of the Judicial Sub Magistrate,Udipi in the case.

-True copy-

25.11.54.

For Addl.Dt.Magistrate (I)

IC/17.11.54.
24

Grounds of appeal against acquittal of the accused in C.C.No. 192/54 on the file of the Judicial Sub Magistrate Udipi

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1. That the judgment of acquittal passed by the J.S.M.Udipi in C.C.No.192/54 acquitting the accused of the offences charged against them is clearly wrong and contrary to law and facts of the case.

2. That the learned S.M failed to properly appreciate and appraise the evidence adduced in the case and due to gross mis-appreciation of the evidence, there has been a miscarriage of justice in the case.

3. That the conclusions of the trial court is clearly wrong and contrary to the weight of evidence. The lower court has been completely misled by the cleverly manipulated false defence supported by forged documents resulting in substantial failure of justice.

4. That the lower court erred materially to the detriment of proper administration of justice in refusing to exercise judicial discretion under Sec.540 and sec.94 Cr.P.C to summon witnesses and documents which were absolutely necessary for the proper appreciation of evidence and for just decision of the case. The applications filed by the prosecution under these sections have been summarily rejected by the lower court without assigning reasons or applying its mind.

5. That the lower court clearly in an utter state of confusion has not even perused the evidence, is quite evident from the fact that the judgement refers to S.Nos.142/2 and S.No.140/2 of Karne village as the field in dispute when in fact the evidence is that it is S.No.141/2.

6. That the lower court illegally allowed the defence to adduce secondary evidence with regard to the contents of a cultivation register which is not a public document and improperly admitted documentary evidence of private document without their being properly and legally proved.

7, That Ex D5 and D6 the two lease deeds along with other documents produced by the defence were challenged by the prosecution as false and forged documents ~~filed by~~ at every stage of the case and the petitions filed by the prosecution

conclusively establish this fact. In spite of all these, the lower court was pleased to hold in the judgment that these documents were not challenged by the prosecution.The lower court has made a misstatement of fact either deliberately to bolster up the defence or without making the required effort to understand the evidence in the case.

8. That P.W.1 is admittedly the pattadar and owner of S.No.141/2 the field in question. The defence engineered by DW 1 by means of false and forged unregistered lease deeds misled the lower court to arrive at wrong conclusions that the defacto land lordship vests with Kathi Shedthi. The principle involved in this case is of high magnitude and very great public interest. Hence an appeal against the acquittal to squash the same may kindly be preferred.

Sd/ M.M.Prabhu
4.11.54
Public Prosecutor
Mangalore.

-True copy-

25-11.54.
For Addl.Dt.Magistrate (I)

C.C.192/54 Calendar and Judgment.

(For use in cases whether there are more accused person than one)

District: South Kanara.

Calendar of cases tried by the Judicial II class Magistrate of Udipi.

Offence.	Date of Report of complaint.	Apprehension of accused.	Release on bail.	Commencement of trial.	Close of trial.	Sentence or order.
On 8.6.54 at about 10 A.M	9.7.54	A1 to A4 9.7.54	9.7.54	9.7.54	30.9.54	

Explanation of delay and remarks.

Judgment in calender Case No. 192/54 on the file of Judicial II class Magistrate of Udipi.

Complainant State (Karkal Station F.I.No.52/54)

Name of accused	Age Years	Father's name
1.Paddu Naika	35	Bale Naika

Name of accused.	Age	Father's name
2.Charba Naika	30	Balu Naika
3.Eraya Shetty	43	Boggu Shetty
4.Sundara Naika	24	Babu Naika

Caste or religion.	Calling.	Residence.	Taluk
1.Marati (Hindu)	Cultivation	Marne	Karkal
2. -do- (Hindu)	-do-	-do-	-do-
3.Bunt (Hindu)	-do-	Varanga	-do-
4.Marati (Hindu)	-do-	-do-	-do-

Offence: A1 to A4 trespass and use of criminal force otherwise than one grave provocation--offences punishable under sections 447 and 352 I.P.C

FINDING A1 to A4- Not guilty.

SENTENCE: A1 to A4 Acquitted under section 245 (1) Cr.P.C.

Sd/ P.C.Hegde
Judl.Sub Magistrate.

C.C.192/54 JUDGEMENT

Accused: Paddu Naik and others.

The four accused in this case have been charged by the S.I of police Karkala for offences of Criminal trespass and using criminal force punishable under section 447 I.P.C and 352 I.P.C respectively. The allegation is that on 8.6.54 at about 10 A.M the accused trespassed into the property in S.No.141/2 of Marne village in the possession of the Puttanna Bhatta and caused annoyance and intimidation to him and further cut and the ropes of Bulls in the field and drove them away from the fields of the said Puttanna Bhatta.

2. The accused when questioned denied the offence.

3. The broad facts of the case for the prosecution side are as follows. Puttanna Bhatta (P.W.1) who is the complainant in this case has a field called Balligadde in Nandar Bail of Marne village comprised in S.No.141/2. This was leased out on chalgeni to one Linga Naika P.W.2 about 7 years back on 16.5. 4 this Linga Naik surrendered this field to Puttanna Naik under a

Sedachit. This field is surrounded by the properties of Rathi Shedthi of Mathibettu of whom A1 and A2 are the tenants, After Linga Naika surrendered the fields Puttanna Bhatta wanted to cultivate the said Balligadde himself and so get it ploughed once or twice before the date of offence. On 8.6.54, the date of offence he wanted to get it ploughed once again and therefore at about 10.A.M. was getting it ploughed by witness, Pigina Sherigara and witness Mentu Naika.Just then, the accused in a body came and A1 among them cut the tying ropes of the bulls by a bill hook, while the other 3 accused drove out the ploughing buffaloes and thus prevented Puttanna Bhat and his men from cultivating the field. It is further alleged that PW1 was pushed down by A3. Apprehending that there will be further trouble he laid a complaint before the patel in which he requested for police aid. The Police went to the scene next day and stopped the accused from planting seedlings in the field which they were doing and arrested A1 and A2 who were present there.

4. The above facts of the prosecution case are spoken to by witnesses PW1 to PW8 who have been examined on behalf of the prosecution.

5. PW1 is the complainant whose property is said to have been trespassed.The facts of the case as set out in para 2 is testified to by him in detail. He further says that Linga Naik and A1 and A2 are cousin brothers. Linga Naik as tenant was paying a rent of 4 muras and Rs.4/- to him. Ex.P.1. is a chalageni chit executed by Linga Naika in his favour for the year 1948 Ex.P2.is the genichit for 1953. Ex.P3 is the Sedachit dated 16.4.54 executed by Linga Naik surrending the said field to him. It was after this that he (PW1) wanted to cultivate the field himself and during such cultivation the incident took place. Witness Linga Naika, Pigina Sherigara and Mentu Naika were said to be ploghing the fields and he himself was there getting it done the accused came and prevented them from ploughing.A3 asked A1 to cut the tying ropes of the bulls. A1

cut it with a bill hook, the other accused drove away the buffaloes. A3 pulled down a hand stick which PW1 had and pushed him into the field. Thus obstructed from ploughing his own field PW1 went and reported the matter to the Patel and sought police aid. This version of PW1 is corraborated by the evidence of PW2 Linga Naik his tenant,. He adds that when he was the tenant ofPW1 in respect of the field in question he was residing in a house which was in Rathi Shedthi's property. He affirms the genichits and sedachit executed by him in favour of Pw1. PW3 is one of the persons who was engaged by PW1, to plough his field on the day of incident. He adds that twice before he had ploughed the said Balligadde for PW1. PW4 is the writer of Ex.P1 and P2 and P3. He says that these genichits and sedachits were executed by PW2 Linga Naik in favour of PW1 and he was present at the time of their execution. PW5 is an attesting witness to Ex.P1 and P2 PW6 is a resident of Marwe village, he knew PW1 and PW2 and speaks to his attestation of the Sedachit Ex.P3. PW7 is the Patel of Marwe village, He speaks to his report Ex.P6 and the recording of Ex.P4., the statement of PW1 when the matter was reported to him, he went to the Nandar bail to verify matters and saw that the field was ploughed to the accused and PW1 and PW2 were all therem. He was also present when the Sub Inspector visited the scheme scene of offence the next day. PW8 is the Sub Inspector of Police who conducted investigation in this case. When he visited the scheme of offence on 9.6.54 he saw A1 and A2 in the field and some women folk were planting seedlings. He stopped them from further planting. He arrested A1 and A2, questioned witnesses and also arrested A3 and A4 later and laid a charge sheet for offences under section 447 and 352 I.P.C.

6. The accused are defended by their Lawyers. The contention of the accused is that the said Balligadde field is included in the cultivation of A1 and that he was cultivating it under one Rathi Shedthi along with other fields in the said Nandar Bail belonging to her. The complainant was not at all in possession of

the said field as alleged and that this criminal case has been started as a device to throw out A1 from actual possession of the field to spite him and Rathi Shedthi.

7. The defence has examined 8 witnesses to substantiate its contentions and produced also documentary evidence to support it. DW1 is the main witness. He is the husband of one Rathi Shedthi who is the landlord of A1 for the holding in question in the said Mandur Pait. He testifies that A1 and PW2, Linga Naik were living together and were undivided and during that time, Until 1931, Genichits for the Pallik field S.No.14 /2 was made in favour of Rathi Shedthi, PW2 himself has attested some of the Genichit. Subsequently in 1947 when A1 and PW2 fall out, the holding was divided and separate Genichits by A1 and PW2 were executed in favour of Rathi Shedthi. S.No.141/2 was included in the cultivation of A1 by Panchayat. & PW2 left the property in April 1954 and as there was arrears of rent a registered notice was also given, but he did not reply. The fields quitted by PW2 was given to A1 for cultivation. The said fields were never in actual possession of P.1 at anytime Because of some temple dues which was being paid by Rathi Shedthi to PW1 was discontinued to be paid to him, he has started this criminal proceeding to spite her as well as to get into possession. The other defence witnesses speak to the attestation and writing of Genichit filed in support of defence contention.

8. The main question on which the whole case to turn is the question on which the whole case to turn is the question of actual possessions, as to who was the cultivating tenant of the Pailgadde S.No.142/2 of Kurne village. The question of title to that property or the right to possession thereof is not of prime importance for the offence of criminal trespass. Therefore the contention of PW1 and that of DW1 or behalf of Rathi Shedthi that the Pailgadde in Mandurbail was under their respective legal rights of Panuloydship becomes a matter civil character, and so beyond the competence of a criminal court to go into. It would however appear from the prosecution and defence contentions that the prosecution wants that court to

believe that the complainant had actually resumed possession of the said fields from PW2 Linga Naik, while the defence wants the court to believe that the actual cultivating right and therefore the right of tenancy continued to be with A1 even at the time of the alleged offence. Prosecution has produced 2 Genichits. Ex.P1 and Ex.P2 executed by Linga Naik in 1948 and in 1953 in favour of the complainant and also a Sodachit Ex.P3 executed by him in 1954. Against this the defence has produced a series of Genichits Ex.D1. to D6 which go to show that the Balligadde field was under the Land Lordship of Rathi Shedthi.

The case of PW1 is supported by the evidence of PW2 Linga Naik who is his own kith. He says that he executed the ~~xxkxxxxhx~~ Sodachit Ex.P3 in April 1954 and therefore PW1 got it ploughed on the day of the offence be along with PW3 were ploughing the field when the accused came and prevented them and assaulted PW1 , PW3 also corroborates this. PW4 is the writer of Genichit Ex.P1. PW5 is the attester to ExP1 and Ex.P2 .PW6 is the attestor of the Sodachit Ex.P3, PW7 is the Patel of Kurne village. He speaks to his report Ex.P6 and statement of PW1 recorded by him in Ex. 4. PW8 is the investigating officer who did investigation in the case.

This is a case where on account of the production of documentary evidence on both sides their strength and weakness has to be judged by their relative merit. The execution of the Genichits Ex.D5 and Ex.D6 in favour of Rathi Shedthi by A1 and PW2 respectively in respect of the Balligadde field which is attested by the complainant himself, and which is not challenged goes to show that the defacto landlordship of S.N .146/2 was with Rathi Shedthi in 1949 as is spoken to by DW1. If that so is so it is clear that he himself has recognized the divided brother PW2 and A1 as tenants of the said Rathi Shedthi and therefore it follows that he cannot automatically put an end to it and unilaterally resume possession of the Balligadde field, while in fact possession of it under Ex.D5 and D6 continued to be with A1 on behalf of Rathi Shedthi. The case of the defence is that PW2

Subsequently ran into arrears of rent and left the holding S.No.142/2 where upon A1 was entrusted with its cultivation by Dw1 on behalf of his wife, Rathi Shedthi, and he was cultivating it and it was in his possession even during the time of the alleged offence Ex.D.7 is a certified ~~III~~ extract of A Registers kept by the Shanbogue showing the name of actual cultivators for the year 1951-1952. The entry in Ex.D7A shows the ~~III~~ name of the cultivator as Pudu Naika (A1). It also shows the name of the person in enjoyment as Pw1. These things go to show that A1 was the cultivating tenant of the said Balligadde field. Whether he was cultivating it on behalf of Rathi Shedthi or on behalf of Pw1 is not quite self evident and is not of the essence for a dicision in this case. One thing is clear and that is A1 was the cultivating tenant both by right and by sufferance. It follows therefore that there can be no question of criminal trespass, because the field is in his own possesion.

The other charge against the accused for an offence under S.352 looses all its point, when it is remembered that there can be no criminal force if itis to defend one's right in the property. Further the evidence with regard to use of criminal force namely that A1 cut the tying ropes of the Bulls and A3 pushed Pw1 to the field is not spoken to by any disinterested witness from the scene only Pw1 and his own men Pw2 speak to it. Though it is said that there are many neighbouring houses near the field and there were some persons near by none of them have been examined. This only shows that the allegation of criminal force is sought as a device to set the criminal law in motion to suit the object of getting into possession by short cut methods.

For reasons discussed above I find that the accused are not guilty and acquit them U/s 245 (i) C.R.P.C.

Pronounced in open court this 30th day of September, 1954.

(Sd) P.C. Hegde
30.9.54
J.S.M. Kudpi

Appendix.

Witnesses examined for.

Prosecution	Defence.
1. Puttanna a Vishnumoorthi Bhat	1. Deju Shetty.
2. Linga Naik	2. Nagappa Mallya.
3. Pijina Sherigara	3. Veeraya Shetty
4. Ramanna Naika	4. Narayana Shetty.
5. Sooryanna Hegde	5. Honnayya Shetty.
6. Narayana Naika	6. Gopalkrishna Kini.
7. Sri Y. Dharmaraja Hegde, Potel,	7. Kudpa Shetty.
8. Sri B. M. Hegde, Sl.	8. Cheyyabba Beary.

Exhibits filed for

Prosecution.

P1	11-4-48	Chalgeni chit executed by Linga Naika (P.W.2)
P2	16-9-53	Chalgeni chit executed by Linga Naika (P.W.2)
P3	16-4-54	Soda chit executed by P.W.2 (on the back of Ex.P.2)
P4	8-6-54	Statement of Pw1 before the V.M.
P5	16-4-54	Receipt passed by Pw1 in favour of Pw2.
P6	8-6-54	Report of Pw7 to the S.S.M.
P7	9-6-54	Observation Yadast.
P8	8-6-54	Report of Pw7 to the S.H.O.

For Defence

D1	6-8-33	Chalgeni chit
D2	28-8-35	Chalgeni chit
D3	4-9-39	Chalgeni chit
D4	15-9-44	Chalgeni Chit
D5	25-9-49	Chalgeni chit
D6	25-9-49	Chalgeni chit
D7	----	Certified copy of A. Register
		Material objects marked 1.Rope.

(Sd) P. C. Hegde
Judicial S.M.
23-11-54.
For Addl. Dt. Magistrate

Government of Madras,
Home Department

PUBLIC PROSECUTOR'S OFFICE
Pm 180/54
1 DEC 1954
MADRAS

Endorsement no. 153756 CT&I/54-1

Dated 30.11.54

Referred to the Public Prosecutor, Madras, for early remarks.

Assistant Secretary

29.11.54

To
The Public Prosecutor,
Madras (with encl: pp 16 13 4).
to be returned with his reply.

G.F. 32 (a)—184,468—15-11-52.

JUDICIAL Department | Received ——— Registered ———

From (Name) Sri V.T.Rangaswami Ayyangar, B.A., B.L.,
Designation Public Prosecutor,
Station Madras

To

The Secretary to Government,
Home Department,
Madras.

Enclosures: OPN. No.1180 of 1954., dated 3--12-- 1954.

Sir,

SUB: Appeal against acquittal - C.C.192/54 Judicial Sub Magistrate, Udipi - Forwarding opinion.

...

15679/C2
4/12

With reference to your endorsement No. 153754 Cts I/54-1 dated 30-11-54, I give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

Opinion.

A | In this case four accused were charged for offences punishable under Sections 447 and 352 I.P.C. and they were acquitted by the Judicial Sub Magistrate, Udipi.

2) I have gone through the judgment of the learned Magistrate and as had been observed by him the question is one entirely of civil nature and that no question of criminal trespass punishable under Sec. 447 I.P.C. could be said to have been made out. Further with reference to the charge under Sec. 352 I.P.C. also, it had been observed by the learned Magistrate that the allegation of criminal force has not been established and has been introduced as a sort of device to set the criminal law in motion to construe the object of getting the object by short cut methods.

3 In my view the matter is one entirely depending upon an appreciation of the evidence and it cannot be stated that there are such strong or compelling reasons warranting interference in appeal against acquittal which is not therefore likely to be successful.

V.T. Rangan
Public Prosecutor.
3/12
3.12.54

HOME DEPARTMENT.

[C. No. 153754.

G.O. Rt. No. 3653 Dated 10.12.57.

CRIMINAL JUSTICE—Appeal against acquittal – C.C. No. 192 of 1957 on the file of the S.M., Udipi - Application—Declined.

Read.—From the ~~D.M.~~/A.D.M. (I)/~~Commissioner of Police, Madras~~. S. Kanara, C.S. 6708/54 dt/5.11.57

From the P.P./~~S.P.~~, Madras, Opn. No. 180 of 1957, dated 3.12.1957.

ORDER.

The Government do not consider it advisable to appeal to the High Court against the acquittal by the S.M., Udipi, of the accused in C.C./~~S.C.~~ No. 192 of 1957 on his file.

2. A copy of the opinion of the Public/~~State~~ Prosecutor, Madras, is forwarded to the ~~D.M.~~/A.D.M. (I)., ~~(I).,~~ ~~Commissioner of Police,~~ for information.

Copy to the P.P./ ~~S.P.~~ Madras.

To the ~~D.M.~~/ADM (I)., S. Kanara, ~~Commissioner of Police, Madras~~ (with copy of ~~by~~ Registered Post). pp. 17418 c.f.

S.F.

NOTE.—The draft order above is in accordance with the opinion of the P.P./~~S.P.~~ Madras at pp. 17418 c.f.

If the Government differ from the Public/~~State~~ Prosecutor, Madras, and propose to prefer an appeal, the Advocate-General should ordinarily be consulted before orders preferring an appeal are issued.

The date of judgment is 30.9.57
Three months time expires on 29.12.57
Six months time expires on 29.3.58

Home (Cts I) Dept.

C.No. 1537/54/54

Crl. Jus. – Appeal against acquittal – S. Kanara dist. – C.C. 192/54, S.M., Udipi – U/S. 447 & 352 I.P.C.

Ref: From the A.D.M.(I) ~~S.Kan~~ S. Kanara, C5. 6708/54 dt 15.11.54.

The A.D.M.(I)., S. Kanara, has submitted proposals for filing an appeal against the acquittal of the accused by the S.M. Udipi in C.C. No. 192/54 on this file. The case may, in the first instance be referred to the P.P., Madras. The draft submitted is for signature.

29.11.54.

30/11/54

29/11/54

Issue Draft.

30.11.54

C. 153754 (Jus) dft in original.

30/11

From the P.P., Madras, opn. No 180/54 dt 3.12.54

The ~~A.D.M.(I)~~ Collector., S. Kanara, submitted proposals for filing an appeal against the acquittal of the accused by the S.M., Udipi, in

P. 1 cf

(To X on p. 13 infra)

C.C. no. 192 of 54 on his file. The accused were charged for offences punishable u/s. 447 & 3529.P.C. The P.P., Madurai, was consulted whether an appeal against their acquittal could be filed. He opines that the case entirely depends on an appreciation of the evidence and that it cannot be stated that there are such strong and compelling reasons warranting interference in an appeal. In the C.C. an appeal in this case is not likely to be successful. The Govt. may decline to file an appeal in this case. The draft order submitted accordingly is for approval.

A on p. 17 c/f

b. 15 c/f

p. no 3, p. 18 c/f.

& para 2. ibid also

7.12.54

8/12/54

7/12/54

Issued as G.O.R. 3653 dt 10.12.54